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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA
11

12 RICHARD SCHNEIDER,

CASE NO.:

13 Plaintiffs,

14 vs.

PETITION FOR REMOVAL
UNDER 28 U.S.C. § 1441 (B)

15 STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY; and DOES I - V
16 and ROES VI - X, inclusive;

(Diversity Jurisdiction)

17 Defendants.

18 Pursuant to 28 U.S.C. § 1441 (b), Defendant, State Farm Mutual Automobile
19 Insurance Company ("State Farm"), by and through its attorneys, Lewis Brisbois Bisgaard
20 & Smith LLP, files this Petition for Removal of Clark County District Court Case No. A-14-
21 708329-C styled Richard Schneider v. State Farm Mutual Automobile Insurance
22 Company, and states as follows:

23 1. On October 9, 2014, an action was commenced in the Eighth Judicial
24 District Court, Clark County, State of Nevada, entitled Richard Schneider v. State Farm
25 Mutual Automobile Insurance Company, Case No. A-14-708329-C ("State Court Action").
26 Copies of the Complaint ("State Court Complaint"), Summons, and Proof of Service are
27 attached hereto and marked respectively as Exhibits A, B, and C, constituting all of the
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1 papers and pleadings served on Defendant State Farm.

2 2. Service of the Summons and Complaint upon Defendant State Farm was
3 made by the Division of Insurance on October 21, 2014.

4 3. This action is a civil action of which this Court has original jurisdiction under
5 28 U.S.C. § 1332, and is one which may be removed to this Court by Defendant State
6 Farm pursuant to the provisions of 28 U.S.C. § 1441 (b) in that it is a civil action between
7 citizens of different states and the matter in controversy exceeds the sum of \$75,000.00,
8 exclusive of interest and costs.

9 4. Venue is appropriate in the unofficial Southern District of the Court pursuant
10 to 28 U.S.C. §§ 1393 (b)(2) and (c), 1441 (a); and LR IA6-1.

11 5. In the State Court Action, the matter in controversy exceeds the sum of
12 \$75,000.00, exclusive of interest and costs. The Complaint in this action contains
13 allegations that State Farm failed to meet its contractual obligations to Plaintiff arising
14 from several insurance contracts and that such actions constitute bad faith, for which
15 Plaintiff seeks to recover general as well as punitive damages.¹ Plaintiff alleges he
16 suffered "serious, permanent, and debilitating" bodily injury as a result of the subject
17 accident that have caused "a loss of enjoyment of life [and] great pain and suffering of
18 mind and body." He alleges his claim warrants full payment of \$100,000 in underinsured
19 policy limits, \$50,000 from each of two different policies. Plaintiff asserts that his personal
20 injury claim is worth "at least \$250,000." Plaintiff's Complaint also seeks extra-
21 contractual damages related State Farm's actions on separate counts of bad faith and
22 unfair trade practices. He seeks in excess of \$10,000 for each separate count of
23 wrongdoing. Further, Plaintiff asserts that State Farm's actions rose to the level of

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25 ¹ There are several cases analogous to this one in which a jury verdict of punitive damages support a
26 finding in this case that Plaintiff's claimed damage amounts could exceed \$75,000. *See, Pacific Mut. Life*
27 *Ins. Co. v. Haslip*, 499 U.S. 1 (U.S. 1991)(affirming nearly \$1 million punitive damages award over insurer's
28 mishandling of \$4,000 medical claim); *Banker's Life & Cas. Co. v. Crewshaw*, 486 U.S. 71 (U.S.
1988)(affirming punitive damages award of \$1.6 million arising out of insurer's failure to pay a \$20,000
medical claim).

1 oppression, or malice, subjecting the Plaintiff to extreme physical, mental, and emotional
 2 distress. Plaintiff alleges actions by State Farm entitle him to punitive damages on two
 3 separate counts in excess of \$10,000.² Thus, Plaintiff prays for general and special
 4 damages, punitive damages, and attorney's fees and costs in excess of an aggregate
 5 \$140,000 on the face of the complaint alone.

6 A defendant's duty is not to prove by a preponderance of the evidence that the
 7 plaintiff is likely to recover an amount in excess of the threshold. Rather, the jurisdictional
 8 minimum in diversity cases is determined by the amount at stake to either party. *Hamrick*
 9 *v. REO Props. Corp.*, 2010 U.S. Dist. LEXIS 85073 (Nev. 2010). In other words, the
 10 amount in controversy is satisfied when the plaintiff's potential gain exceeds the
 11 jurisdictional limit. *Id.* The pertinent question the Court is to ask is whether or not plaintiff
 12 is likely to ask a jury for an amount above \$75,000.00. *Canonico v. Seals*, 2013 U.S.
 13 Dist. LEXIS 60047 (Nev. 2013). As such, the appropriate figure to use in determining
 14 whether State Farm has presented adequate evidence to establish the amount in
 15 controversy is not the probable amount that Plaintiff will recover, but rather the total
 16 potential value of Plaintiff's claims considering all of the allegations and all the asserted
 17 damages. If State Farm can show by a preponderance of evidence that (1) Plaintiff is
 18 likely to ask from the jury an amount over the jurisdictional threshold, or (2) were a jury to
 19 award Plaintiff full recovery, that award would be over the jurisdiction threshold, then
 20 jurisdiction with the Federal Court should remain. As such, it is apparent from the type of
 21 damages alleged in the Complaint that the amount in controversy is in excess of \$75,000,

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 23
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 25 finding in this case that Plaintiff's claimed damage amounts could exceed \$75,000. *See, Pacific Mut. Life*
 26 *Ins. Co. v. Haslip*, 499 U.S. 1 (U.S. 1991)(affirming nearly \$1 million punitive damages award over insurer's
 27 mishandling of \$4,000 medical claim); *Banker's Life & Cas. Co. v. Crewshaw*, 486 U.S. 71 (U.S.
 28 1988)(affirming punitive damages award of \$1.6 million arising out of insurer's failure to pay a \$20,000
 medical claim). *Julie Gourley v. State Farm Mutual Ins. Co.*, 1987 Nat. Jury Verdict Review LEXIS 622
 (Cal. 1987)(awarding \$1.5 million punitive damages award over insurer's mishandling of a \$15,000 medical
 claim); *Fortimil Pierre-Louis v. Colonial Ins. Co.*, 1989 FL Jury Verdicts Rptr. LEXIS 2862 (Fla.
 1989)(awarding \$1 million in punitive damages based on the denial of a \$2,500 medical claim).

1 exclusive of interest and costs, and that State Farm has satisfied the jurisdictional
2 threshold.

3 6. Defendant State Farm is informed and believes that Plaintiff was, at the time
4 of filing of the State Court Action, and still is, a resident of Clark County, State of Nevada.
5 State Farm is a corporation organized and existing under the laws of the State of Illinois,
6 with its principal places of business in Bloomington, Illinois.

7 7. Based on the foregoing, Defendant State Farm respectfully submits that (a)
8 there is diversity of citizenship between Plaintiff and Defendant State Farm and (b) the
9 amount in controversy exceeds \$75,000.00. This action is, therefore properly removed to
10 the United States District Court for the Northern District of Nevada.

11 DATED this 19 day of November, 2014.

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13
14
15 By


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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b), I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 19 day of November, 2014, I did cause a true and correct copy of PETITION FOR REMOVAL UNDER 28 U.S.C. § 1441 (B) (Diversity Jurisdiction) to be served via electronic service by the U.S. District Court CM/ECF system to the parties on the Electronic Filing System.

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